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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 744

23

PATRICIA WALDRON, as executrix of the last will and
testament of GERALD B. WALDRON, Deceased,

Petitioner,

—against—

CITIES SERVICE Co.,

Respondent.

RESPONDENT'S REPLY BRIEF

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RESPONDENT'S REPLY BRIEF

**Respondent has denied every allegation of wrongdoing
made by Petitioner at any time.**

Petitioner's reply brief is so misleading that a brief response is required.

Petitioner claims that Cities Service never denied participation in the alleged conspiracy and that this must lead to reversal of summary judgment. (Pet. Reply Br. pp. 1-4). As we noted in our brief in opposition, this statement ignores the entire record in this case (Brief in Opp. p. 6). Cities has denied every allegation that petitioner has made charging Cities with wrongdoing.

Thus, in his complaint of June 11, 1956, petitioner alleged that co-defendants:

“Gulf and Anglo-Iranian, during late August or early September, 1952, conspired to and did offer Cities

Service and Cities Service did accept a vast long term supply of Kuwait oil at a price far below the posted International Gulf of Persia price . . . *At this time and by these acts Cities Service, without knowledge of plaintiff, entered into combination and conspiracy with the other defendants* and in furtherance of defendants' scheme broke off further negotiations with plaintiff and the National Iranian Oil Company and refused to enter into any contract or arrangement with reference to Iranian petroleum. As a further consequence of this conspiracy Cities Service eventually gained a participation in the Consortium Agreements relating to Iranian oil hereinafter described." (Complaint, June 11, 1956, ¶10(i)(6), Deft's App. 59a-61a) (emphasis added).

In its summary judgment papers, Cities Service not only denied these allegations but *proved* they were false by an overwhelming preponderance of evidence. (Affidavit of George H. Hill, Jr. April 8, 1960, and Exhibits 2-59 in support of Cities' motion for summary judgment April 8, 1960, Deft's App. 146a-370a; see also Brief in Opp., pp. 16-19).

It is true that no *formal* answer was filed, formally denying these allegations. The reason was that defendants sought and were granted an extension of time within which to answer or make motions directed to the complaint by Judge Weinfeld of the United States District Court for the Southern District of New York. The order was entered on July 10, 1956, and the time of defendants Cities Service, Socony, Standard Oil (New Jersey) and Texaco to answer or move with respect to the complaint was extended until thirty days after plaintiff's deposition was completed.

After Cities had completed its 3½ day examination of plaintiff, and while the time was thus extended, it moved for summary judgment.

Since plaintiff had stated in his complaint and deposition that Kuwait and Consortium were the acts by which Cities joined the conspiracy, Cities' summary judgment motion addressed itself to the assertions plaintiff made. It so demolished them that plaintiff never again raised these assertions, and Judge Herlands found that "The naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference . . ." (Opinion, March 30, 1961, Pltf's App. 71a). In fact, petitioner was later forced to amend his complaint and abandon his allegations concerning both Kuwait and the Consortium.

Petitioner filed an amended complaint on June 28, 1963, at a time when Cities' summary judgment directed to his initial complaint was *sub judice*.

The reason why Cities never answered the allegations of the amended complaint so as to deny the allegations of "conspiracy" was that petitioner *stipulated* in writing on July 29, 1963 that Cities need not answer until thirty days after the determination of Cities' summary judgment motion. Since Cities' motion was granted, Cities was never required to answer the amended complaint.

Accordingly, petitioner's argument in his reply brief that Cities never submitted a pleading denying the conspiracy allegations is meaningless. Yet, petitioner asserts that the absence of an answer by Cities denying the allegations in the amended complaint must result in a reversal of Cities' summary judgment!

The contention is unworthy of serious consideration. Summary judgment is a remedy designed to deal with facts, not the state of the pleadings. The documented undisputed facts require summary judgment.

CONCLUSION

The petition should be denied.

Dated: New York, New York
January 11, 1967

Respectfully submitted,

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